



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	:	LON/00BB/LDC/2024/0140
Properties	:	18,040 individual properties in the Districts, Counties and London Boroughs listed on the additional sheet accompanying the Tribunal application
Applicants	:	Clarion Housing Group Limited (1) Clarion Housing Association Limited (2) Latimer Developments Limited (3)
Representative	:	Anthony Collins Solicitors LLP (Reference JW2.045179.0054)
Respondents	:	Long leaseholders and tenants of the properties in the areas listed on the schedule to the Tribunal application
Representative	:	Unrepresented
Type of Application	:	Section 20ZA Landlord and Tenant Act 1985 – to dispense with the requirement to consult about a long-term agreement for the supply of electricity and gas
Tribunal member	:	Judge J P Donegan
Date of Paper Determination	:	01 October 2024
Date of Corrected Decision	:	01 15 October 2024

CORRECTED DECISION

The Tribunal exercises its powers under rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct clerical mistakes, accidental slips, or omissions at paragraphs (c) and (d) of its decision dated 01 October 2024. The corrections are shown below, in red.

Decision of the Tribunal

- (a) The Tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') to enable the applicants to enter multiple Qualifying Long Term Agreements ('QLTAs') for the bulk purchase of electricity and gas for their properties for the period 01 April 2025 to 31 March 2028.
- (b) No terms are imposed on the grant of dispensation.
- (c) ~~The applicants must send a copy of this decision to each of the respondents and any recognised residents' association, either by email, hand delivery or first-class post. They must also display the decision on the first applicant's website. The applicants must either send a copy of this corrected decision and the appeal rights to all respondents, or upload a copy on their website, if they have one, or on a web-based document storage site within 7 days of receipt and shall maintain it there for at least 3 months, with a sufficiently prominent link to both on their home page, or (if longer) until the new contract is entered into.~~
- (d) The applicants must send an email to the Tribunal by ~~22~~ 29 October 2024, confirming the date(s) they complied with paragraph (c), above.

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application is dated 14 May 2024 and directions were originally issued on 26 June 2024. Revised directions were issued on 11 July 2024. The case was allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 01 October 2024.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The applicants are the freeholders/landlords of approximately 18,040 properties and wish to enter QLTA's for the supply of gas and electricity to these properties, based on advice from their energy broker, Inenko Group Limited ('IGL'). The first applicant entered a master agreement with IGL on 05 September 2023 ('the Master Agreement') and IGL has advised on the procurement strategy.
5. The Master Agreement is not a QLTA for which the applicants are required to consult under section 20 of the 1985 Act, as the amount payable by any leaseholder/tenant paying a service charge will be less than £100 in any 12-month accounting period.
6. The applicants wish to enter multiple QLTA's for the bulk purchase of electricity and gas for the period 01 April 2025 to 31 March 2028. Given the current volatility in the energy markets, they wish to enter new contracts when prices are favourable without having to consult leaseholders/tenants each time.
7. The Tribunal previously granted dispensation on a similar application, by the second and third respondents for the period 01 April 2021 to 31 March 2024 (case reference LON/00BE/LDC/2020/0067).
8. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

The grounds of the application

9. The grounds were set out in the Tribunal application and helpful witness statements from Daniel Rapley and David Hunter. In brief, their case is:
 - (a) Purchasing energy from wholesale markets secures competitive pricing.
 - (b) Energy prices are currently volatile, which is largely due to the ongoing war between Russia and Ukraine and the effect this continues to have on supply to Europe.
 - (c) Typically, energy prices vary by 3-30% within a day and more than 100% over a year.
 - (d) Adopting a flexible three-year wholesale purchasing strategy would enable IGL to react to this volatility and enter new energy contracts, on behalf of the applicants, when prices are favourable. There are different purchasing strategies but buying from the wholesale market generally secures competitive pricing. It negates the need to place volume on a single day of

the year. Rather, numerous contracts are placed as the market fluctuates with IGL seeking out the most competitive prices.

- (e) The applicants are unable to provide estimated energy costs to leaseholders and tenants, to comply with the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the 2003 Regulations'), as energy will be purchased when a competitive price was identified by IGL.
 - (f) IGL will provide a bespoke energy procurement service to enable them to manage energy costs by seeking out the most competitive prices.
10. Paragraph 2 of the revised directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. No objections have been received by the applicants or the Tribunal.

The Tribunal's decision

11. The Tribunal grants dispensation from the consultation requirements of section 20 of the 1985 Act and the 2003 Regulations, to enable the applicants to enter multiple QLTA's for the bulk purchase of electricity and gas for their properties pursuant to the Master Agreement with IGL

Reasons for the Tribunal's decision

12. The grounds advanced by the applicants are compelling. Purchasing energy on the wholesale market will enable them to take advantage of price fluctuations and will financially benefit them and their leaseholders/tenants. It was reasonable for the first applicant to enter the Master Agreement and follow the advice of IGL, who are specialist brokers that use different purchasing strategies to secure competitive pricing.
13. The current volatility in the energy market makes it impractical to consult the respondents each time the applicants wish to enter a new energy contract.
14. None of the respondents has contested the application or identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.
15. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the strict consultation requirements.

16. This decision does not address the amount of the communal energy costs or whether the respondents are liable to contribute to these costs via their service charges. Nothing in this decision prevents the respondents from seeking a determination of ‘payability’, pursuant to section 27A of the 1985 Act.

Name: Judge J P Donegan

Date: ~~01~~15 October 2024

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

- (2) In section 20 and this section –
“qualifying works” means works on a building or any other premises, and
“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.